

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2005-_____

AND MANDATORY PENALTY
IN THE MATTER OF

CITY OF MANTECA
SAN JOAQUIN COUNTY

This Order is issued to the City of Manteca (hereafter Discharger) based on a finding of violations of NPDES Waste Discharge Requirements (WDR) Order No. 97-115, Order No. 5-01-007, and Order No. R5-2004-0028 (NPDES No. CA0081558). Imposition of Administrative Civil Liability and Mandatory Penalties are authorized pursuant to California Water Code (CWC) section 13385.

The Central Valley Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board) finds with respect to the Discharger's acts or failure to act, the following:

1. The Discharger owns and operates the City of Manteca Wastewater Quality Control Facility (WQCF), which provides sewerage service to the City of Manteca. Treated municipal wastewater is discharged to the San Joaquin River, a water of the United States, and part of the Sacramento-San Joaquin Delta.
2. On 20 June 1997, the Regional Water Board adopted WDR Order No. 97-115 to regulate discharges of waste from the WQCF. On 26 January 2001, the Regional Water Board adopted WDR Order No. 5-01-007, rescinding Order No. 97-115. On 19 March 2004, the Regional Water Board adopted WDR Order No. R5-2004-0028, rescinding Order No. 5-01-007.
3. On 29 March 2005, the Executive Officer issued the Discharger Administrative Civil Liability Complaint No. R5-2005-0509 (Complaint) proposing a \$533,000 Administrative Civil Liability pursuant to CWC section 13385. The Complaint included the assessment of \$393,000 in mandatory penalties and \$140,000 for non-discharge violations. The amount of the liability for the non-discharge violations was established based upon a review of the factors cited in CWC section 13385 and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy.

Mandatory Penalties

4. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.

CWC section 13385 (h)(2) states for purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the

applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any period of six consecutive months.

- i. Violates a waste discharge requirement effluent limitation.
- ii. Fails to file a report pursuant to CWC section 13260.
- iii. Files an incomplete report pursuant to CWC section 13260.
- iv. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

5. WDR Order Nos. 97-115, 5-01-007, and R5-2004-0028 include, in part, the following effluent limitations:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
BOD ₅ ¹	mg/l	20 ²	30 ²	---	50 ²
	lbs/day ³	1350	2030	---	3380
Total Suspended Solids	mg/l	20 ²	30 ²	---	50 ²
	lbs/day ³	1350	2030	---	3380
Total Coliform	MPN/100 ml	---	23 ⁴	---	500
Settleable Solids	ml/l	0.1	--	---	0.2
Chlorine Residual ⁶	mg/l	---	0.01 ⁵	0.02	---
Arsenic ⁷	ug/l	10	---	---	---
	lbs/day ³	0.68	---	---	---
Copper ⁷	ug/l	7.9	---	---	10.4
	lbs/day ³	0.53	---	---	0.70
Cyanide ⁷	ug/l	3.7	---	---	10
	lbs/day ³	0.25	---	---	0.68
Bis(2-ethylhexyl)phthalate ⁷	ug/l	22	---	---	44
	lbs/day ³	1.5	---	---	3
Bromodichloromethane ⁷	ug/l	5	---	---	8
	lbs/day ³	0.34	---	---	0.54

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
Dibromochloromethane ⁷	ug/l	1.4	---	---	2.8
	lbs/day ³	0.095	---	---	0.19

¹5-day, 20°C biochemical oxygen demand (BOD)

²To be ascertained by a 24-hour composite

³Based upon a design treatment capacity of 8.11 mgd

⁴Weekly median

⁵Expressed as 4-day average

⁶WDR Order Nos. 5-01-007 and R5-2004-0028, only

⁷WDR Order No. R5-2004-0028, only

6. CWC section 13385(j) provides exceptions to the assessment of mandatory penalties required by CWC section 13385(h) and (i). CWC section 13385(j) states, in part, the following:

”(j) Subdivisions (h) and (i) do not apply to any of the following:

”(3) A violation of an effluent limitation where the waste discharge is in **compliance** with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308...” (emphasis added)

7. On 19 March 2004, pursuant to CWC section 13301, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2004-0029, which was subsequently amended by Resolution No. R5-2004-0142 on 26 July 2004. Pursuant to CWC section 13385(j), while the Discharger is in compliance with CDO No. R5-2004-0029, violations of Effluent Limitations B.1 through B.3 for aluminum, arsenic, copper, cyanide, electrical conductivity, iron, manganese, MBAS, nitrate, and nitrite contained in WDR Order No. R5-2004-0028 are exempt from the assessment of mandatory penalties.
8. From 1 September 2004 through 27 June 2005, the Discharger was out of compliance with the time schedule to assure compliance with Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS included in CDO No. R5-2004-0029. While not in compliance with CDO No. R5-2004-0029, the Discharger was not protected against the assessment of mandatory penalties for violations of Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS included in WDR Order No. R5-2004-0028. This Order includes the assessment of mandatory penalties for effluent violations for these parameters, which occurred while the Discharger was out of compliance with CDO No. R5-2004-0029.
9. On 25 June 2004, the Discharger was issued Administrative Civil Liability Complaint (ACLC) No. R5-2004-0829 assessing mandatory penalties pursuant to CWC section 13385(h). The mandatory penalties were assessed based on 35 effluent violations

occurring between 1 January 2000 and 31 March 2004. One of the violations has since been determined to not be subject to mandatory penalties, which would require the ACLC to be amended. Since the ACLC was not settled, this Order incorporates the assessment of mandatory penalties dating back to 1 January 2000 and up through 31 January 2005, with the correction noted above.

10. According to monitoring reports submitted by the Discharger through 28 February 2005, the Discharger committed seventy-four (74) serious violations during the period beginning 1 January 2000 and ending on 31 January 2005. The mandatory penalty for these serious violations is **\$222,000**.
11. According to monitoring reports submitted by the Discharger through 28 February 2005, the Discharger also committed sixty-six (66) violations of effluent limitations that were not considered serious violations. Fifty-seven (57) of these non-serious violations are subject to mandatory penalties under CWC section 13385(i)(2). The mandatory penalty for these non-serious violations is **\$171,000**.
12. The total mandatory penalty for serious and non-serious violations is **\$393,000**. A detailed list of all violations is included in Attachment A, a part of this Order.

Non-Discharge Violations

13. The Discharger was in violation of WDR Order No. R5-2004-0028 due to failure to comply with the compliance time schedules in Provisions H.1, 2, 5, 6, 7, 8, 10, and 21. The Discharger was also in violation of CDO No. R5-2004-0029 due to failure to comply with compliance time schedules required in CDO Items 2 and 5.
14. On 18 August 2004, staff issued a Notice of Violation (NOV) regarding the Discharger's failure to comply with Provision H.21, which requires implementation of a pretreatment program pursuant to Code of Federal Regulations Part 403.
15. The Discharger has failed to fully implement a pretreatment program for several years. Tetra Tech, on behalf of the Regional Water Board, conducted a Pretreatment Compliance Audit on 25-26 October 2001, followed by Pretreatment Compliance Inspections on 15 May 2003 and 22 June 2004. Each inspection report cited similar inadequacies in the Discharger's draft pretreatment program. The Discharger had not been monitoring and conducting compliance inspections, had not been issuing permits, and had not evaluated the Significant Industrial Users for the need to develop and implement slug discharge control plans. Each inspection recommended the Discharger adopt the necessary legal authority to fully implement a pretreatment program and recommended the Discharger implement its draft program more fully.
16. State Water Board legal counsel conducted a legal review of the Discharger's pretreatment program in January 2003. By letter dated 22 January 2003, Regional Water Board staff forwarded the legal review comments to the Discharger and advised the

17. On 22 November 2004, staff issued a NOV and CWC section 13267 Order regarding the Discharger's failure to comply with Provisions H.1, 2, 5, 6, 7, and 10 and the compliance time schedules required in CDO No. R5-2004-0029. In addition to the NOV, WQCF staff was made aware of the Discharger's non-compliance during a compliance inspection on 8 December 2004. The Discharger had failed to meet any of these compliance time schedules and had only submitted reports in response to NOVs and CWC section 13267 Orders.
18. In response to the 22 November 2004 NOV, the Discharger claimed it had fallen behind on the time schedules due to staffing and budgeting constraints, and maintained its budget was in the final stages of development when WDR Order No. R5-2004-0028 was adopted in March 2004. However, the Discharger had failed to comply with nearly all compliance time schedules in WDR Order No. R5-2004-0028 and CDO No. R5-2004-0029. The compliance time schedules require the Discharger to inform the Regional Water Board when out of compliance and to provide a schedule for when compliance is anticipated. The Discharger only provided this information after being issued a NOV for failure to comply.

19. CWC section 13385 states, in part:

“(1) Section 13375 or 13376”.

(2) Any waste discharge requirements...issued pursuant to this chapter...”

“(5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended”.

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

“(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

“(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the

number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons”.

“(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation”.

20. The Discharger’s delay in submitting required reports and fully implementing a pretreatment program has resulted in economic savings to the Discharger. It is estimated that the Discharger derived an economic benefit, from the acts that constitute the violations, of not less than \$61,000. As of 29 March 2005, the Discharger was in violation of WDR Order No. R5-2004-0028 for a maximum of 234 days for failure to submit reports. The maximum statutory liability is \$2,340,000 (\$10,000 for each day of violation).
21. Since receiving the Complaint, the Discharger has demonstrated efforts to provide the necessary documentation to the Regional Board for approval of its industrial pretreatment program and has begun to more fully implement the program. Additionally, the Discharger has made progress in returning to compliance with the time schedules required in WDR Order No. R5-2004-0028 and CDO Order No. R5-2004-0029. Therefore, the assessment of administrative civil liability provided in this Order for the non-discharge violations has been reduced to include only the estimated economic benefits derived by the Discharger and the incurred Regional Water Board staff costs.
22. The total amount of administrative civil liability assessed by this Order is \$463,000, which includes the assessment of \$393,000 in mandatory penalties and \$70,000 for non-discharge violations.
23. On 20 June 2005, the Discharger submitted a letter proposing to fund the implementation of a supplemental environmental project (SEP) to offset a portion of the administrative civil liability. The proposed riparian habitat restoration project has a total budget of \$204,000 and will be administered by River Partners. The proposed project involves planting 11,000 linear feet of wildlife habitat on the west side of the abandoned/ decommissioned Army Corps of Engineers levees on the Vierra Unit of the San Joaquin River National Wildlife Refuge. Details of the SEP proposal are provided in Attachment B, a part of this Order.

24. On 13 July 2005, the Discharger submitted a check for \$90,000 made payable to the *State Water Pollution Cleanup and Abatement Account* as an advance payment of a portion of the Administrative Civil Liability.
25. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).
26. Any person affected by this action of the Regional Water Board may petition the State Water Board to review this action. The State Water Board must receive the petition within 30 days of the date on which the Regional Water Board adopted this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that the Discharger shall pay a penalty of \$463,000 as follows, which considers the advance payment of \$90,000 previously submitted by the Discharger on 13 July 2005:

1. **Within 30 days of adoption of this Order**, the Discharger shall pay \$169,000 by check, which contains a reference to “ACL Order No. R5-2005-____” and is made payable to the *State Water Pollution Cleanup and Abatement Account*.
2. **By 1 January, annually**, the Discharger shall provide a status report to the Regional Water Board documenting progress of the supplemental environmental project. By **1 April 2009**, the Discharger shall provide a final report documenting completion of the supplemental environmental project as described in Finding 23 and Attachment B of this Order. If the Discharger does not maintain compliance with this schedule, by order of the Executive Officer, the Discharger shall pay the remaining \$204,000 by check, which contains a reference to “ACL Order No. R5-2005-____” and is made payable to the *State Water Pollution Cleanup and Abatement Account*.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on 15/16 September 2005.

THOMAS R. PINKOS, Executive Officer